



UNITED STATES PATENT AND TRADEMARK OFFICE

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UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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Paper No. 13

In re Application of :
Perry R. DeYoung : DECISION ON PETITION
Application No. 09/586,943 :
Filed: June 2, 2000 :
Attorney Docket No. OLI02 P-350 :

This is a decision on the petition filed on October 21, 2002 by which petitioner request withdrawal of the examiner's restriction requirement. No fee is required for the petition, and the \$130.00 fee tendered therewith will refunded to Deposit Account No. 16-2463.

The petition is granted.

Petitioner has presented a lengthy and, in many instances, an essentially correct recitation of the reasons why the examiner's restriction requirement is not supported by the practice set forth in Chapter 800 of the Manual of Patent Examining Procedure.

In addition, it is the observation of the undersigned that all of the claims presented in this application are directed to a machine which is a combination of elements called by petitioner "a food press." All of the claims are open ended "comprising type" claims, whereby the "food press" recited in a given claim includes the specifically identified elements of that claim and is open ended so as to encompass a device which includes those elements together with additional unspecified elements. **That the claims are of varying scope does not convert them into claims for different devices; the claims all are directed to "a food press."** While a claim to such a device which merely recited a single specified element, such as, for example, "a food press comprising a lid", or even a plurality of specified elements such as, for example, "a food press comprising a lid and a hinge", could well be regarded as not being directed to "a food press" on the theory that the words "a food press" were functional only, and not supported by sufficient structure to support that function, the claims in this application are not of that sort. Every claim recites sufficient structure so that the combination of elements in the claim defines "a food press."

Petitioner is entitled to define an invention by presenting a plurality claims to that invention which are of varying scope. That there may be more than one patentable "aspect" of the disclosed invention does not preclude petitioner from presenting claims to the "overall device" which specifically recite only one such aspect, provided that petitioner does so in a claim that recites sufficient structure to define that overall device. Claiming in this manner does not convert the disclosure into a disclosure of multiple "overall devices", and does not trigger the restriction practice set forth in Chapter 800 of the Manual of Patent Examining Procedure. Restriction might apply if petitioner advanced claims limited to a specific recitation of a given one those "aspects", whether open ended or not, and regardless of whether the claim preamble recited "an overall device" or "an aspect of the overall device." But, as discussed above, that simply is not the situation in this application.

The application is being forwarded to the Head Supervisory Applications Examiner to accomplish the refund discussed above. Thereafter, the application will be forwarded to the Supervisory Patent Examiner for Art Unit 3724 who will undertake to have this application examined in a manner not inconsistent with this decision.

PETITION GRANTED.

E. Rollins-Cross, Director, Patent
Examining Groups 3710 and 3720

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